

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PHILIP SMITH,

Plaintiff,

-v-

NEW YORK CITY POLICE DEPARTMENT, P.O. :
MANUEL CORDOVA, DET. FORTE, DET. :
GILL, :

Defendants. :
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JED S. RAKOFF, U.S.D.J.

06 Civ. 15436 (JSR)

ORDER

<p>USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: _____ DATE FILED: <u>5-17-10</u></p>

On February 4, 2010, the Honorable Kevin Nathaniel Fox, United States Magistrate Judge, issued a Report and Recommendation ("Report") in the above-captioned matter recommending that defendants' motion for summary judgment pursuant to Federal Rule of Civil Procedure 56 be granted in part and denied in part. Specifically, Judge Fox recommended that (1) the Court deny defendants' motion with respect to Smith's Fourth Amendment excessive force claim, in violation of 42 U.S.C. § 1983, as disputed issues of material fact concerning the reasonableness of the officers' actions, including any defense of qualified immunity, preclude summary judgment; and (2) the Court grant summary judgment in defendants' favor for the claims asserted against Detectives Forte and Gill, as plaintiff has failed to assert any factual allegations of personal involvement as a basis for liability; for plaintiff's claims for reckless endangerment and attempted murder, as these are criminal offenses for which an individual lacks a private

right of action; and, finally, for any claims against the New York City Police Department, as this entity lacks the capacity to be sued. On February 22, 2010, defendants timely filed an objection to the Report, asserting that no material issues of fact precluded summary judgment for defendants on plaintiff's excessive force claim against Officer Cordova and that, in any event, he was entitled to qualified immunity. On March 3, 2010, Smith requested a 45-day extension to file an objection and response on the ground that defendants had not sent a copy of its objection to Smith at his correct address, which the Court granted, and Smith timely filed his objections to the Report.

After reviewing the parties' motions de novo as well as their objections, the Court finds itself in complete agreement with Magistrate Judge Fox's excellent Report and hereby adopts its reasoning by reference. The Court further directs Judge Fox to take all necessary steps to make the case trial-ready on the excessive force claim against Officer Cordova.

Finally, the Clerk of the Court is directed to close document number 39 on the docket of the case.

SO ORDERED.



JED S. RAKOFF, U.S.D.J.

Dated: New York, New York
May 16, 2010